



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

June 21, 1991

Mr. Robert E. Diaz  
Assistant City Attorney  
City of Arlington  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR91-302

Dear Mr. Diaz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12337.

You have forwarded to us for our review various documents that relate to the city's investigation of alleged criminal conduct. You advise that the matter is still under active investigation and that the city intends to submit the matter to the district attorney for prosecution upon completion of its investigation. In your letters dated April 26, 1991 and June 7, 1991, you assert that section 3(a)(8) of the Open Records Act excepts all of the documents from required public disclosure.

Section 3(a)(8) of the Open Records Act excepts from disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to enforcement and prosecution.

In Open Records Decision No. 474 (1987), this office held that section 3(a)(8) "may be invoked by any proper custodian of information relevant to an incident involving allegedly criminal conduct that is still under active investigation or prosecution." *See also* Attorney General Opinion MW-575 (1982) (if investigatory file is open and there exists a reasonable probability of criminal prosecution, a non-law enforcement agency may claim section 3(a)(8) as to the open file). Given the facts that you describe indicating the continuing nature of the city's

investigation and the reasonable probability of criminal prosecution, you may withhold the documents forwarded to us for review pursuant to section 3(a)(8). If after completion of its investigation, the city decides not to submit the matter to the district attorney for prosecution the section 3(a)(8) exception will as a general rule no longer apply. See Attorney General Opinion MW-575. Once section 3(a)(8) no longer applies to a document or file, you may assert other exceptions to disclosure of that document or file and forward to us material that you seek to withhold from disclosure based on those exceptions.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-299.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/lb

Ref.: ID# 12337, 12404, 12449, 12501, 12685

Enclosures: Attorney General Opinion MW-575; Open Records Decision No.474

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